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**OFFICE OF PETITIONS**

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In re Patent of Van Eis, et al. :  
Patent No. 7,691,861 :  
Issued : April 6, 2010 : ON APPLICATION FOR  
Application No. 10/586,420 : PATENT TERM ADJUSTMENT  
Filed: July 19, 2006 :  
Atty Docket No. NOV-05-US :

This decision is in response to the "REQUEST FOR PATENT TERM ADJUSTMENT REDETERMINATION UNDER 37 CFR 1.705," filed March 19, 2010. Applicants request that the Office remove the 42 day period of reduction charged against applicants in connection with the delay in filing a compliant response to the December 5, 2008 non-final Office action and, instead, charge applicants with a period of reduction of no greater than 7 days.

The petition is **DISMISSED**.

On April 6, 2009, applicants filed a response to the non-final Office action, mailed December 5, 2008. On April 13, 2009, the Office mailed a Notice of Non-Compliant Amendment to an incorrect address. Applicants did not learn of the mailing of the Notice of Noncompliant Amendment until May 15, 2009. Applicants filed a compliant amendment and extension of time fee on May 18, 2009. The Office subsequently refunded applicants' extension of time fee.

Applicants argue that they should not be charged with a 42 day period of reduction in connection with the delay in filing a compliant response to the December 5, 2008 non-final Office action because the Office erred in mailing the April 13, 2009 Notice of Noncompliant Amendment to an incorrect address.

37 CFR 1.704(c)(7) establishes submission of a reply having an omission (37 CFR 1.135(c)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to

conclude processing or examination of an application. Submitting a reply having an omission requires the Office to issue an action under 37 CFR 1.135(c) and await and process the applicant's reply to the action under 37 CFR 1.135(c) before the initial reply (as corrected) can be treated on its merits. In addition, 37 CFR 1.704(c)(7) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed.

On April 6, 2009, applicants filed a reply to the non-final Office action mailed December 5, 2008. This reply after non-final Office action was filed three-months and 32 days after the Office action was mailed. Thus, pursuant to 37 CFR 1.704(b), applicants were charged with a 32 day reduction. It is undisputed that an amendment with an omission was filed on April 6, 2009. The April 6, 2009 reply was non-compliant. The response correcting the omission was not filed until May 18, 2009.

Thus, entry of a period of reduction of 42 days pursuant to 37 CFR 1.704(c)(7) is warranted and will not be removed or modified. The 42 day period of reduction is calculated beginning on the day after the date the initial noncompliant reply was filed, April 7, 2009, and ending on the date that a compliant reply was filed, May 18, 2009.

In view thereof, the determination of patent term adjustment remains five hundred forty-two (542) days (355 days of A period delay plus 261 days of B period delay, reduced by 74 days of Applicant delay).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

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